

SUBSTITUTE AMENDMENT TO THE COMMITTEE

PRINT

OFFERED BY MR. MARKEY

[Privacy Opt-In/Opt-Out]

Strike out title V as amended and insert the following:

1 **TITLE V—PRIVACY OF**
2 **CONSUMER INFORMATION**
3 **Subtitle A—Disclosure of**
4 **Nonpublic Personal Information**

5 **SEC. 501. OBLIGATIONS WITH RESPECT TO PERSONAL IN-**
6 **FORMATION.**

7 (a) GENERAL REQUIREMENTS.—Except as otherwise
8 provided in this subtitle, a financial institution may not,
9 directly or through any affiliate, divulge or make an unre-
10 lated use of any nonpublic personal information collected
11 by the financial institution in connection with any trans-
12 action with a consumer in any financial product or any
13 financial service, unless—

14 (1) such financial institution provides or has
15 provided to the consumer a notice that complies with
16 section 502 and the rules thereunder;

1 (2) such financial institution has established
2 procedures and policies to provide consumers, upon
3 request, access to any nonpublic personal informa-
4 tion pertaining to the consumer that the institution
5 has divulged or made an unrelated use of, for pur-
6 poses of review or correction, in accordance with
7 rules prescribed under section 502(e);

8 (3) such financial institution maintains proce-
9 dures to protect the confidentiality and security of
10 nonpublic personal information.

11 (b) ADDITIONAL REQUIREMENT BASED ON CON-
12 SENT.—

13 (1) USE OR DISCLOSURE FOR TRANSACTION OR
14 WITH CONSENT.—A financial institution may not,
15 directly or through any affiliate, divulge or make an
16 unrelated use of any nonpublic personal information
17 collected by the financial institution in connection
18 with any transaction with a consumer in any finan-
19 cial product or any financial service unless the cus-
20 tomer consents to the practices and policies of the
21 financial institution with respect to divulging non-
22 public personal information, or making unrelated
23 uses of such information, that are disclosed under
24 section 502(a)(2). A financial institution may not
25 condition the availability of a financial product or a

1 financial service on a consumer granting such con-
2 sent.

3 (2) METHODS OF OBTAINING CONSENT.—

4 (A) OPT-OUT; IMPLIED CONSENT.—Except
5 as provided in subparagraph (C), in the case of
6 any policies and practices disclosed that do not
7 involve the divulging of nonpublic personal in-
8 formation to any person or entity other than
9 the financial institution or an affiliate of the fi-
10 nancial institution, a customer shall, for pur-
11 poses of paragraph (1), be considered to con-
12 sent to such policies and practices unless the
13 customer denies consent in the manner indi-
14 cated in the notice.

15 (B) OPT-IN; AFFIRMATIVE CONSENT.—In
16 the case of any policies and practices that do
17 involve the divulging of nonpublic personal in-
18 formation to any person or entity other than
19 the financial institution or an affiliate of the fi-
20 nancial institution, a customer shall, for pur-
21 poses of paragraph (1), not be considered to
22 consent to such policies and practices unless the
23 customer affirmatively grants consent in the
24 manner indicated in the notice.

1 (C) SPECIAL OPT-IN RULE FOR HEALTH
2 AND MEDICAL INFORMATION.—In the case of
3 any policies and practices that involve divulging
4 (whether to the financial institution, an affiliate
5 of the financial institution, or any other person
6 or entity) or making an unrelated use of any
7 nonpublic personal information that is individ-
8 ually identifiable customer health and medical
9 information, a customer shall, for purposes of
10 paragraph (1), not be considered to consent to
11 such policies and practices unless the customer
12 affirmatively grants consent in the manner indi-
13 cated in the notice.

14 (3) RECORDS REQUIRED.—A financial institu-
15 tion shall, in accordance with the rules of an appro-
16 priate regulatory agency, maintain records of the
17 disclosures made and the consents obtained for pur-
18 poses of this section. Such records shall include the
19 date on which the consent was signed and the name
20 and address of the customer giving such consent.

21 (4) EXCEPTION FOR CREDIT REPORTING.—
22 Paragraph (2) shall not apply to the divulging of
23 nonpublic personal information by a financial insti-
24 tution to a consumer reporting agency in accordance
25 with title VI of the Consumer Credit Protection Act

1 to the extent that the information is not used or di-
2 vulged by the consumer reporting agency for mar-
3 keting purposes. For purposes of this paragraph, a
4 transaction that is a firm offer of credit or insurance
5 made in accordance with section 604(c) of such Act
6 shall not be considered as a use or divulgence for
7 marketing purposes.

8 (c) GENERAL EXCEPTIONS.—Subsections (a) and (b)
9 shall not prohibit the divulging of nonpublic personal in-
10 formation, or the making of an unrelated use of such in-
11 formation, by the financial institution—

12 (1) as necessary to effect or enforce the trans-
13 action or a related transaction;

14 (2) as necessary to protect the confidentiality or
15 security of its records pertaining to the consumer,
16 the financial service or financial product, or the
17 transaction therein;

18 (3) as necessary to take precautions against li-
19 ability;

20 (4) as necessary to respond to judicial process;

21 (5) to the extent permitted or required under
22 other provisions of law and in accordance with the
23 Right to Financial Privacy Act of 1974, to provide
24 information to law enforcement agencies (including a

1 functional regulator or the Commission) or for an
2 investigation on a matter related to public safety;

3 (6) to a consumer reporting agency in accord-
4 ance with title VI of the Consumer Credit Protection
5 Act; or

6 (7) in executing a sale or exchange whereby the
7 financial institution transfers to another financial in-
8 stitution or other person the business unit or oper-
9 ation, or substantially all the assets of the business
10 unit or operation, with which the customer's trans-
11 actions were effected.

12 **SEC. 502. NOTICE CONCERNING DIVULGING INFORMATION.**

13 (a) RULE REQUIRED.—The Commission shall, after
14 consultation with the Federal functional regulators and
15 one or more representatives of State insurance regulators,
16 prescribe rules in accordance with this section to prohibit
17 unfair and deceptive acts and practices in connection with
18 the divulging of nonpublic personal information or with
19 making unrelated uses of such information. Such rules
20 shall require any financial institution, through the use of
21 a form that complies with the rules prescribed under sub-
22 section (b), to clearly and conspicuously disclose to the
23 consumer—

24 (1) the categories of nonpublic personal infor-
25 mation that are collected by the financial institution;

1 (2) the practices and policies of the financial in-
2 stitution with respect to divulging nonpublic per-
3 sonal information, or making unrelated uses of such
4 information, including—

5 (A) the categories of persons to whom the
6 information is or may be divulged or who may
7 be permitted to make unrelated uses of such in-
8 formation, other than the persons to whom the
9 information must be provided to effect or en-
10 force the transaction; and

11 (B) the practices and policies of the insti-
12 tution with respect to divulging or making un-
13 related uses of nonpublic personal information
14 of persons who have ceased to be customers of
15 the financial institution;

16 (3) the method by which the consumer can deny
17 consent under section 501(b)(2)(A) or grant consent
18 under subparagraph (b) or (C) of section 501(b)(2);
19 and

20 (4) the policies that the institution maintains to
21 protect the confidentiality and security of nonpublic
22 personal information

23 (b) DESIGN OF NOTICE REQUIREMENTS.—In pre-
24 scribing the form of a notice for purposes of subsection
25 (a), the Commission shall ensure that consumers are read-

1 ily able to compare differences in the measures that the
2 financial institution takes, and the policies that the insti-
3 tution has established, to protect the consumer's privacy
4 as compared to the measures taken and the policies estab-
5 lished by other financial institutions. Such form shall spe-
6 cifically identify the rights the institution affords con-
7 sumers, under section 501 or otherwise, to grant or deny
8 consent to (1) the divulging of nonpublic personal infor-
9 mation for any purpose other than as required in order
10 to effect or enforce the consumer's transaction, or (2) the
11 making of an unrelated use of such information.

12 (c) ADDITIONAL CONTENTS OF RULES; EXEMPTIVE
13 RULES.—The Commission shall, by rule after consultation
14 with the functional regulators, and may by order—

15 (1) specify the divulgements and uses of informa-
16 tion which, for purposes of this subtitle and the
17 rules prescribed thereunder, may be treated as nec-
18 essary to effect or enforce a consumer's transaction
19 with respect to a variety of financial services and fi-
20 nancial products;

21 (2) specify timing requirements with respect to
22 notices to existing and new customers, which shall
23 not require notices more frequently than annually
24 unless there has been a change in the information

1 required to be disclosed pursuant to subsection (a);
2 and

3 (3) provide, consistent with the purposes of this
4 subtitle, exemptions or temporary waivers to, or de-
5 layed effective dates for, any requirement of this
6 subtitle or the rules prescribed thereunder.

7 (d) EXEMPTIVE RULES TO PERMIT EFFICIENT DATA
8 STORAGE AND RETRIEVAL.—The exemptive rules pre-
9 scribed by the Commission pursuant to subsection (c)(3)
10 shall include such rules as may be necessary to permit fi-
11 nancial institutions and their affiliates to establish and
12 maintain efficient systems to collect and access nonpublic
13 personal information in shared or networked data storage
14 and retrieval facilities that are implemented in a manner
15 consistent with the requirements of section 501.

16 (e) PROCEDURES FOR THE CORRECTION OF
17 RECORDS.—Consistent with otherwise applicable law, each
18 functional regulator, with respect to the financial institu-
19 tions subject to its jurisdiction, and the Commission, with
20 respect to any other financial institution, shall—

21 (1) establish by rule procedures by which a con-
22 sumer may, upon request, obtain access to nonpublic
23 personal information pertaining to the consumer
24 that the institution has divulged or made an unre-
25 lated use of, for purposes of review or correction; or

1 (2) by rule designate one or more of its existing
2 rules as effective for purposes of paragraph (1).

3 (f) RULEMAKING DEADLINE.—The Commission and
4 each functional regulator shall initially prescribe (or des-
5 ignate) the rules required by this section within one year
6 after the date of enactment of this Act. Such rules, and
7 any revisions of such rules, shall be prescribed in accord-
8 ance with section 553 of title 5, United States Code.

9 **SEC. 503. ENFORCEMENT.**

10 (a) FTC ENFORCEMENT.—

11 (1) IN GENERAL.—Except as otherwise pro-
12 vided in subsections (b), (c), and (d), this subtitle
13 and the rules prescribed thereunder shall be en-
14 forced by the Federal Trade Commission under the
15 Federal Trade Commission Act (15 U.S.C. 41 et
16 seq.).

17 (2) ACTIONS BY THE COMMISSION.—The Fed-
18 eral Trade Commission shall prevent any person
19 from violating this subtitle and the rules prescribed
20 thereunder in the same manner, by the same means,
21 and with the same jurisdiction, powers, and duties
22 as though all applicable terms and provisions of the
23 Federal Trade Commission Act (15 U.S.C. 41 et
24 seq.) were incorporated into and made a part of this
25 subtitle. Any person who violates this subtitle or the

1 rules prescribed thereunder shall be subject to the
2 penalties and entitled to the privileges and immuni-
3 ties provided in the Federal Trade Commission Act
4 in the same manner, by the same means, and with
5 the same jurisdiction, power, and duties as though
6 all applicable terms and provisions of the Federal
7 Trade Commission Act were incorporated into and
8 made a part of this subtitle.

9 (3) TREATMENT OF RULES.—A rule issued by
10 the Commission under section 502 shall be treated
11 as a rule issued under section 18(a)(1)(B) of the
12 Federal Trade Commission Act (15 U.S.C.
13 57a(a)(1)(B)).

14 (b) ENFORCEMENT BY STATE INSURANCE REGU-
15 LATORS.—Compliance with the requirements imposed
16 under this subtitle and the rules prescribed thereunder
17 shall be enforced under the relevant State insurance law
18 by the State insurance regulator in the case of an insur-
19 ance company or an insurance producer.

20 (c) STATE ACTIONS.—

21 (1) IN GENERAL.—Whenever an attorney gen-
22 eral of any State has reason to believe that the in-
23 terests of the residents of that State have been or
24 are being threatened or adversely affected because
25 any financial institution has engaged or is engaging

1 in a pattern or practice which violates this subtitle
2 or the rules prescribed thereunder, the State may
3 bring a civil action on behalf of its residents in an
4 appropriate district court of the United States to en-
5 join such pattern or practice, to enforce compliance
6 with this subtitle and the rules prescribed there-
7 under, to obtain damages on behalf of their resi-
8 dents, or to obtain such further and other relief as
9 the court may deem appropriate.

10 (2) NOTICE.—The State shall serve prior writ-
11 ten notice of any civil action under paragraph (1)
12 upon the Federal Trade Commission and provide the
13 Commission with a copy of its complaint, except that
14 if it is not feasible for the State to provide such
15 prior notice, the State shall serve such notice imme-
16 diately upon instituting such action. Upon receiving
17 a notice respecting a civil action, the Commission
18 shall have the right (A) to intervene in such action,
19 (B) upon so intervening, to be heard on all matters
20 arising therein, and (C) to file petitions for appeal.

21 (3) VENUE.—Any civil action brought under
22 this subsection in a district court of the United
23 States may be brought in the district wherein the
24 defendant is found or is an inhabitant or transacts
25 business or wherein the violation occurred or is oc-

1 curring, and process in such cases may be served in
2 any district in which the defendant is an inhabitant
3 or wherever the defendant may be found.

4 (4) INVESTIGATORY POWERS.—For purposes of
5 bringing any civil action under this subsection, noth-
6 ing in this section shall prevent the attorney general
7 from exercising the powers conferred on the attorney
8 general by the laws of such State to conduct inves-
9 tigations or to administer oaths or affirmations or to
10 compel the attendance of witnesses or the production
11 of documentary and other evidence.

12 (5) EFFECT ON STATE COURT PROCEEDINGS.—
13 Nothing contained in this subsection shall prohibit
14 an authorized State official from proceeding in State
15 court on the basis of an alleged violation of any gen-
16 eral civil or criminal antifraud statute of such State.

17 (6) LIMITATION.—Whenever the Federal Trade
18 Commission has instituted a civil action for violation
19 of this subtitle or the rules prescribed thereunder, no
20 State may, during the pendency of such action insti-
21 tuted by the Commission, subsequently institute a
22 civil action against any defendant named in the
23 Commission's complaint for violation of any rule as
24 alleged in the Commission's complaint.

25 (d) PRIVATE RIGHT OF ACTION.—

1 (1) IN GENERAL.—A person or entity may, if
2 otherwise permitted by the laws or rules of court of
3 a State, bring in an appropriate court of that
4 State—

5 (A) an action based on a violation of this
6 subtitle or the rules prescribed thereunder to
7 enjoin such violation,

8 (B) an action to recover for actual mone-
9 tary loss from such a violation, or to receive
10 \$500 in damages for each such violation, which-
11 ever is greater, or

12 (C) both such actions.

13 (2) TREBLE DAMAGES.—If the court finds that
14 the defendant willfully or knowingly violated this
15 subtitle and the rules prescribed thereunder, the
16 court may, in its discretion, increase the amount of
17 the award to an amount equal to not more than 3
18 times the amount available under paragraph (1)(B)
19 of this subsection.

20 (3) CLASS ACTIONS NOT PERMITTED.—No ac-
21 tion may be brought under this subsection for the
22 benefit of a class of plaintiffs.

23 (4) LIMITATION.—This subsection shall not
24 apply to a violation of section 501(b)(4).

1 **SEC. 504. REVIEW OF RULES BY FUNCTIONAL REGU-**
2 **LATORS.**

3 Within one year after the date of enactment of this
4 Act, each of the functional regulators shall review their
5 rules relating to the maintenance of records and shall, to
6 the extent consistent with otherwise applicable Federal
7 statutes, prescribe such changes as may be necessary to
8 prevent a financial institution from divulging or making
9 unrelated uses of the nonpublic personal information of
10 consumers who have ceased to be customers of such insti-
11 tution.

12 **SEC. 505. DEFINITIONS.**

13 As used in this subtitle:

14 (1) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 (2) FEDDERAL FUNCTIONAL REGULATOR.—The
17 term “Federal functional regulator” means—

18 (A) the Board of Governors of the Federal
19 Reserve System;

20 (B) the Office of the Comptroller of the
21 Currency;

22 (C) the Board of Directors of the Federal
23 Deposit Insurance Corporation;

24 (D) the Director of the Office of Thrift
25 Supervision;

1 (E) the National Credit Union Administra-
2 tion Board;

3 (F) the Farm Credit Administration; and

4 (G) the Securities and Exchange Commis-
5 sion.

6 (3) FINANCIAL INSTITUTION.—The term “fi-
7 nancial institution” means any institution the busi-
8 ness of which is engaging in financial activities or
9 activities that are incidental to financial activities, as
10 determined under section 6(c) of the Bank Holding
11 Company Act of 1956 or section 17(i)(7) of the Se-
12 curities Exchange Act of 1934. Such term, when
13 used in connection with a transaction for a con-
14 sumer, means only the financial institution with
15 which the consumer expects to conduct such trans-
16 action and does not include any affiliate, subsidiary,
17 or contractually-related party of that financial insti-
18 tution, even if such affiliate, subsidiary, or party is
19 also a financial institution and participates in the ef-
20 fecting or enforcement of such transaction.

21 (4) NONPUBLIC PERSONAL INFORMATION.—
22 The term “nonpublic personal information” means
23 personally identifiable information, other than pub-
24 licly available directory information, pertaining to an
25 individual’s transactions with a financial institution.

1 (5) DIRECTORY INFORMATION.—The term ‘pub-
2 licly available directory information’ means sub-
3 scriber list information required to be made available
4 for publication pursuant to section 222(e) of the
5 Communications Act of 1934 (47 U.S.C. 222(3)).

6 (6) UNRELATED USE.—The term “unrelated
7 use”, when used with respect to information col-
8 lected by the financial institution in connection with
9 any transaction with a consumer in any financial
10 product or any financial service, means any use
11 other than a use that is necessary to effect or en-
12 force such transaction.

13 (7) NECESSARY TO EFFECT OR ENFORCE.—The
14 divulging or use of nonpublic personal information
15 shall be treated—

16 (A) as necessary to effect a transaction
17 with a consumer if the divulging or use is re-
18 quired, or is one of the usual and accepted
19 methods, to carry out the transaction and
20 record and maintain the customer’s account in
21 the ordinary course of providing the financial
22 service or financial product, and includes pro-
23 viding the consumer with a confirmation, state-
24 ment, or other record of the transaction, or in-

1 formation on the status or value of the financial
2 service or financial product;

3 (B) as necessary to enforce a transaction
4 with a consumer if the divulging or use is re-
5 quired, or is one of the lawful methods, to en-
6 force the rights of the financial institution or of
7 other persons engaged in carrying out the fi-
8 nancial transaction, or providing the financial
9 product or financial service.

10 The Commission shall, consistent with the purposes
11 of this subtitle, prescribe by rule actions that shall,
12 in a variety of financial services, and with respect to
13 a variety of financial products, be treated as nec-
14 essary to effect or enforce a financial transaction.

15 (8) FINANCIAL SERVICES; FINANCIAL PROD-
16 UCTS; TRANSACTION; RELATED TRANSACTION.—The
17 Commission shall, consistent with the purposes of
18 this subtitle, prescribe by rule definitions of the
19 terms “financial services”, “financial products”,
20 “transaction”, and “related transaction” for pur-
21 poses of this subtitle.

22 (9) AFFILIATE.—The term “affiliate” means
23 any company that controls, is controlled by, or is
24 under common control with another company.

1 **SEC. 506. EFFECTIVE DATE.**

2 This subtitle shall take effect one year after the date
3 on which the Commission prescribes in final form the rules
4 required by section 502(a), except to the extent that a
5 later date is specified in such rules.

6 **Subtitle B—Fraudulent Access to**
7 **Financial Information**

8 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
9 **TION OF FINANCIAL INSTITUTIONS.**

10 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
11 MATION BY FALSE PRETENSES.—It shall be a violation
12 of this subtitle for any person to obtain or attempt to ob-
13 tain, or cause to be disclosed or attempt to cause to be
14 disclosed to any person, customer information of a finan-
15 cial institution relating to another person—

16 (1) by making a false, fictitious, or fraudulent
17 statement or representation to an officer, employee,
18 or agent of a financial institution;

19 (2) by making a false, fictitious, or fraudulent
20 statement or representation to a customer of a fi-
21 nancial institution; or

22 (3) by providing any document to an officer,
23 employee, or agent of a financial institution, know-
24 ing that the document is forged, counterfeit, lost, or
25 stolen, was fraudulently obtained, or contains a

1 false, fictitious, or fraudulent statement or represen-
2 tation.

3 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
4 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
5 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-
6 lation of this subtitle to request a person to obtain cus-
7 tomer information of a financial institution, knowing that
8 the person will obtain, or attempt to obtain, the informa-
9 tion from the institution in any manner described in sub-
10 section (a).

11 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
12 AGENCIES.—No provision of this section shall be con-
13 strued so as to prevent any action by a law enforcement
14 agency, or any officer, employee, or agent of such agency,
15 to obtain customer information of a financial institution
16 in connection with the performance of the official duties
17 of the agency.

18 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
19 IN CERTAIN CASES.—No provision of this section shall be
20 construed so as to prevent any financial institution, or any
21 officer, employee, or agent of a financial institution, from
22 obtaining customer information of such financial institu-
23 tion in the course of—

1 (1) testing the security procedures or systems
2 of such institution for maintaining the confiden-
3 tiality of customer information;

4 (2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 (3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
13 provision of this section shall be construed so as to prevent
14 any insurance institution, or any officer, employee, or
15 agency of an insurance institution, from obtaining infor-
16 mation as part of an insurance investigation into criminal
17 activity, fraud, material misrepresentation, or material
18 nondisclosure that is authorized for such institution under
19 State law, regulation, interpretation, or order.

20 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
22 provision of this section shall be construed so as to prevent
23 any person from obtaining customer information of a fi-
24 nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

4 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
5 SION.—Except as provided in subsection (b), compliance
6 with this subtitle shall be enforced by the Federal Trade
7 Commission in the same manner and with the same power
8 and authority as the Commission has under the title VIII,
9 the Fair Debt Collection Practices Act, to enforce compli-
10 ance with such title.

11 (b) STATE ACTION FOR VIOLATIONS.—

12 (1) AUTHORITY OF STATES.—In addition to
13 such other remedies as are provided under State
14 law, if the chief law enforcement officer of a State,
15 or an official or agency designated by a State, has
16 reason to believe that any person has violated or is
17 violating this subtitle, the State—

18 (A) may bring an action to enjoin such vio-
19 lation in any appropriate United States district
20 court or in any other court of competent juris-
21 diction;

22 (B) may bring an action on behalf of the
23 residents of the State to recover damages of not
24 more than \$1,000 for each violation; and

1 (C) in the case of any successful action
2 under subparagraph (A) or (B), shall be award-
3 ed the costs of the action and reasonable attor-
4 ney fees as determined by the court.

5 (2) RIGHTS OF FEDERAL REGULATORS.—

6 (A) PRIOR NOTICE.—The State shall serve
7 prior written notice of any action under para-
8 graph (1) upon the Federal Trade Commission
9 and—

10 (i) in the case of an action which in-
11 volves a financial institution described in
12 section 522(b)(1), the agency referred to in
13 such section with respect to such institu-
14 tion; or

15 (ii) in the case of an action which in-
16 volves a financial institution subject to reg-
17 ulation by the Securities and Exchange
18 Commission, such Commission.

19 The State shall provide the Federal Trade
20 Commission and any such agency with a copy
21 of its complaint, except in any case in which
22 such prior notice is not feasible, in which case
23 the State shall serve such notice immediately
24 upon instituting such action.

1 (B) RIGHT TO INTERVENE.—The Federal
2 Trade Commission or an agency described in
3 subsection (b) shall have the right—

4 (i) to intervene in an action under
5 paragraph (1);

6 (ii) upon so intervening, to be heard
7 on all matters arising therein;

8 (iii) to remove the action to the appro-
9 priate United States district court; and

10 (iv) to file petitions for appeal.

11 (3) INVESTIGATORY POWERS.—For purposes of
12 bringing any action under this subsection, no provi-
13 sion of this subsection shall be construed as pre-
14 venting the chief law enforcement officer, or an offi-
15 cial or agency designated by a State, from exercising
16 the powers conferred on the chief law enforcement
17 officer or such official by the laws of such State to
18 conduct investigations or to administer oaths or af-
19 firmations or to compel the attendance of witnesses
20 or the production of documentary and other evi-
21 dence.

22 (4) LIMITATION ON STATE ACTION WHILE FED-
23 ERAL ACTION PENDING.—If the Federal Trade Com-
24 mission or any agency described in subsection (b)
25 has instituted a civil action for a violation of this

1 subtitle, no State may, during the pendency of such
2 action, bring an action under this section against
3 any defendant named in the complaint of the Fed-
4 eral Trade Commission or such agency for any viola-
5 tion of this subtitle that is alleged in that complaint.

6 (c) NOTICE OF ACTIONS.—The Federal Trade Com-
7 mission shall—

8 (1) notify the Securities and Exchange Commis-
9 sion whenever the Federal Trade Commission initi-
10 ates an investigation with respect to a financial in-
11 stitution subject to regulation by the Securities and
12 Exchange Commission;

13 (2) notify the Federal banking agency (as de-
14 fined in section 3(z) of the Federal Deposit Insur-
15 ance Act) whenever the Commission initiates an in-
16 vestigation with respect to a financial institution
17 subject to regulation by such Federal banking agen-
18 cy; and

19 (3) notify the appropriate State insurance regu-
20 lator whenever the Commission initiates an inves-
21 tigation with respect to a financial institution sub-
22 ject to regulation by such regulator.

23 **SEC. 523. CIVIL LIABILITY.**

24 (a) ACTIONS AUTHORIZED.—Any person who fails to
25 comply with any provision of this subtitle with respect to

1 any financial institution or any customer information of
2 a financial institution shall be liable to such financial insti-
3 tution or the customer to whom such information relates
4 in an amount equal to the sum of the amounts determined
5 under each of the following paragraphs:

6 (1) ACTUAL DAMAGES.—The greater of—

7 (A) the amount of any actual damage sus-
8 tained by the financial institution or customer
9 as a result of such failure; or

10 (B) any amount received by the person
11 who failed to comply with this subtitle, includ-
12 ing an amount equal to the value of any non-
13 monetary consideration, as a result of the ac-
14 tion which constitutes such failure.

15 (2) ADDITIONAL DAMAGES.—Such additional
16 amount as the court may allow.

17 (3) ATTORNEYS' FEES.—In the case of any suc-
18 cessful action to enforce any liability under para-
19 graph (1) or (2), the costs of the action, together
20 with reasonable attorneys' fees.

21 (b) CLASS ACTIONS NOT PERMITTED.—No action
22 may be brought under this section for the benefit of a class
23 of plaintiffs.

1 **SEC. 524. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Whoever knowingly and inten-
3 tionally violates, or knowingly and intentionally attempts
4 to violate, section 521 shall be fined in accordance with
5 title 18, United States Code, or imprisoned for not more
6 than 5 years, or both.

7 (b) ENHANCED PENALTY FOR AGGRAVATED
8 CASES.—Whoever violates, or attempts to violate, section
9 521 while violating another law of the United States or
10 as part of a pattern of any illegal activity involving more
11 than \$100,000 in a 12-month period shall be fined twice
12 the amount provided in subsection (b)(3) or (c)(3) (as the
13 case may be) of section 3571 of title 18, United States
14 Code, imprisoned for not more than 10 years, or both.

15 **SEC. 525. RELATION TO STATE LAWS.**

16 (a) IN GENERAL.—This subtitle shall not be con-
17 strued as superseding, altering, or affecting the statutes,
18 regulations, orders, or interpretations in effect in any
19 State, except to the extent that such statutes, regulations,
20 orders, or interpretations are inconsistent with the provi-
21 sions of this subtitle, and then only to the extent of the
22 inconsistency.

23 (b) GREATER PROTECTION UNDER STATE LAW.—
24 For purposes of this section, a State statute, regulation,
25 order, or interpretation is not inconsistent with the provi-
26 sions of this subtitle if the protection such statute, regula-

tion, order, or interpretation affords any person is greater than the protection provided under this subtitle, as determined by the Commission, on its own motion or upon the petition of any interested party.

SEC. 526. AGENCY GUIDANCE.

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

SEC. 527. REPORTS.

(a) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate

1 State insurance regulators, shall submit to the Congress
2 a report on the following:

3 (1) The efficacy and adequacy of the remedies
4 provided in this subtitle in addressing attempts to
5 obtain financial information by fraudulent means or
6 by false pretenses.

7 (2) Any recommendations for additional legisla-
8 tive or regulatory action to address threats to the
9 privacy of financial information created by attempts
10 to obtain information by fraudulent means or false
11 pretenses.

12 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
13 CIES.—The Federal Trade Commission, the Attorney Gen-
14 eral, and each of the agencies referred to in section
15 522(b)(1) shall submit to Congress an annual report on
16 number and disposition of all enforcement actions taken
17 pursuant to this subtitle.

18 **SEC. 528. DEFINITIONS.**

19 For purposes of this subtitle, the following definitions
20 shall apply:

21 (1) CUSTOMER.—The term “customer” means,
22 with respect to a financial institution, any person (or
23 authorized representative of a person) to whom the
24 financial institution provides a product or service,
25 including that of acting as a fiduciary.

1 (2) CUSTOMER INFORMATION OF A FINANCIAL
2 INSTITUTION.—The term “customer information of
3 a financial institution” means any information main-
4 tained by or for a financial institution which is de-
5 rived from the relationship between the financial in-
6 stitution and a customer of the financial institution
7 and is identified with the customer.

8 (3) DOCUMENT.—The term “document” means
9 any information in any form.

10 (4) FINANCIAL INSTITUTION.—

11 (A) IN GENERAL.—The term “financial in-
12 stitution” means any institution engaged in the
13 business of providing financial services to cus-
14 tomers who maintain a credit, deposit, trust, or
15 other financial account or relationship with the
16 institution.

17 (B) CERTAIN FINANCIAL INSTITUTIONS
18 SPECIFICALLY INCLUDED.—The term “financial
19 institution” includes any depository institution
20 (as defined in section 19(b)(1)(A) of the Fed-
21 eral Reserve Act), any broker or dealer, any in-
22 vestment adviser or investment company, any
23 insurance company, any loan or finance com-
24 pany, any credit card issuer or operator of a
25 credit card system, and any consumer reporting

1 agency that compiles and maintains files on
2 consumers on a nationwide basis (as defined in
3 section 603(p)).

4 (C) SECURITIES INSTITUTIONS.—For pur-
5 poses of subparagraph (B)—

6 (i) the terms “broker” and “dealer”
7 have the meanings provided in section 3 of
8 the Securities Exchange Act of 1934 (15
9 U.S.C. 78c);

10 (ii) the term “investment adviser” has
11 the meaning provided in section 202(a)(11)
12 of the Investment Advisers Act of 1940
13 (15 U.S.C. 80b–2(a)); and

14 (iii) the term “investment company”
15 has the meaning provided in section 3 of
16 the Investment Company Act of 1940 (15
17 U.S.C. 80a–3).

18 (D) FURTHER DEFINITION BY REGULA-
19 TION.—The Federal Trade Commission, after
20 consultation with Federal banking agencies and
21 the Securities and Exchange Commission, may
22 prescribe regulations clarifying or describing
23 the types of institutions which shall be treated
24 as financial institutions for purposes of this
25 subtitle.